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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/696,635	10/25/2000	Kestutis Tautvydas	11536-001001/55190USA8A	4398
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EXAMINER

COTTON, ABIGAIL MANDA

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/696,635

Applicant(s)

TAUTVYDAS ET AL.

Examiner

Abigail M. Cotton

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

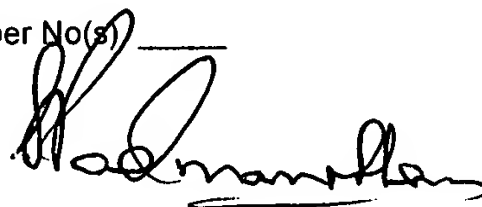
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____
13. ☐ Other: _____



**SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER**

Continuation sheet (note 11):

The request for reconsideration does not place the application in allowance for the reasons of record as stated in the final office action mailed January 18, 2006.

In particular, Applicants argue that it would not be obvious to combine the teachings of either Andrews references with those of Komp, because Komp teaches a composition for odor suppression that is desirably non-irritating, whereas the Andrews references teach the anionic surfactants are effective against both gram-negative and gram-positive bacteria, and Applicant shows exhibits A and B to illustrate that sodium sulfosuccinate and sodium lauryl sulfate are irritating to tissue. Applicants argue that providing irritating components such as these surfactants is contrary to the teachings of Komp, and thus the combination would not be obvious to one of ordinary skill in the art.

The Examiner notes that the Andrews references themselves do not teach that the surfactants are irritating. Furthermore, in the Exhibits provided by Applicants, sodium lauryl sulfate is taught as being a surfactant that is used in cosmetics (see first full paragraph of Exhibit A, in particular.) Thus, while the surfactant may cause some irritation in certain concentrations or under certain conditions, one of ordinary skill in the art would recognize that it is clearly non-irritating enough to be suitable for use in cosmetic applications such as the body deodorant composition of Komp.

Applicants furthermore argue that the references do not teach or suggest the “kit” as recited in the claim. However, as discussed in the final office action mailed January 18, 2006, providing the ingredients in containers and as a part of a kit is well known and is well within the competence level of one of ordinary skill in the art. Accordingly, one of ordinary skill in the art would find it obvious to provide a “kit” having a first container with the fatty acid monoester, and a second container with the enhancer, such as for example first and second containers that comprise bottles in which the ingredients are received from a commercial vendor, or a container that is used to mix the ingredients together to form the antibacterial or antimicrobial composition as taught in the prior art.

It is furthermore, noted, as discussed above, that Andrews et al (5,460,833) teaches forming a first solution of a composition comprising a surfactant and the antimicrobial acid, and a second composition comprising the glycerol monolaurate (with dioctyl sodium sulfosuccinate optionally added to either of the first and second solutions), and then combining the two (see column 5, lines 40-60, in particular), and thus necessarily teaches providing at least two containers to hold the first and second solutions before combining. Accordingly, the kit comprising the first and second containers having the ingredients is obvious over the cited prior art.

Applicants furthermore argue that the claims are not obvious over Beerse et al. because Beerse teaches over 150 compounds. The Examiner maintains that, regardless of the extent of the Beerse et al. teachings, the Beerse et al. reference

nonetheless renders the claims obvious for the reasons of record as stated in the final office action mailed January 18, 2006.

Applicants furthermore request that full consideration be given to the Declaration by Matt Scholz filed before mailing of the final office action. The Examiner has given this declaration her full consideration, and maintains that the declaration does not provide a showing of unexpected results that is sufficiently persuasive to overcome the rejections over the prior art for the reasons of record enumerated in the final office action mailed on January 18, 2006.

The Examiner notes that the proposed amendments to the claims are not being entered, as they are not deemed to place the application in better form by materially reducing the issues for appeal. Furthermore, the Examiner notes that Applicant's proposed amendment to recite combining the components of the container "for use," would not place the application in condition for allowance. The cited references, including Komp, the Andrews references, and Beerse et al, all have as their ultimate object the "use" of the compositions taught therein. Thus, this limitation is deemed obvious over the teachings of the references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abigail M. Cotton whose telephone number is (571) 272-8779. The examiner can normally be reached on 9:30-6:00, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMC